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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1964

Zigmont J. LeTowt, Jr., and
Virginia L. LeTowt, Petitioners

v.

Commissioner Of Internal Revenue,
Respondent.

On Petition for writ of Certiorari to
The United States Court of Appeals for
The Third Circuit.

PETITION FOR WRIT OF CERTIORARI

Zigmont J. LeTowt, Jr.
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Pro Se

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Zigmont J. LeTowt, Jr., and Virginia C. LeTowt, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on March 12, 1964.

Issuance of the mandate in the above cause has been stayed, by ORDER of said Court, pursuant to Rule 36 (2) of this Court, to May 25, 1964.

Opinion of the Court Below

Opinion of the United States Court of Appeals for the Third Circuit, Sigmont J. LeTowt, Jr., et al, petitioners v. Comm. of Internal Revenue, respondent, case #14,534 on appeal from the Tax Court of the United States.

Argued January 21, 1964
Before Biggs, Chief Judge, and Forman and Ganey, Circuit Judges.

Opinion of The Court
(Filed March 12, 1964)

Per Curiam.

The petitioners' situation is one for which the members of the court have much sympathy, but the remedy must lie with Congress for we may not by judicial legislation revise the existing tax law. The decision of the Tax Court will be affirmed.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Third Circuit.

Statement of Jurisdiction

The judgment of the Court of Appeals was entered on March 12, 1964, affirming the decision of the Tax Court.

A stay of the mandate was applied for by petitioners on the ground of making application to the Supreme Court of the

United States for a writ of certiorari.

Pursuant to Rule 36 (2) of the Court, a stay of mandate was ORDERED by said Court, to May 25, 1964.

Questions Presented

The highly respected OPINION of the revered judges of the Court contains therein the profound questions; this OPINION, -stated as concisely, as compendiously, as succinctly and as tersely as can be possibly expressed.

The OPINION deems to include every subsidiary question fairly comprised in this case.

(quoting:) "---**the remedy must lie with Congress**---" implies, irrevocably, the need to cure or heal, to make right, to repair, to correct.

REDRESSING A WRONG; PREVENTING A RECURRENCE, IS THIS COURT'S TASK.

Rule Involved

Sections 62 (2) (B) and 162 (a) (2) of the Internal Revenue Code of 1954.

Statement of the Case

The petitioners are husband and wife and have resided since 1930 in Bethlehem, Pa. For the calendar years 1958 and 1959 petitioners filed joint returns with Dist. Dir. of Internal Revenue at Scranton, Pa., the returns in dispute. (Stip. of Facts No.1. par.2; Exhs.1-A and 2-A)

Petitioners have regularly filed joint returns from 1950 when co-petitioner, the wife, began employment to help defray college expenses for a son at Lehigh Univ. beginning in 1951.

Petitioner Zigmont S. LeTowt, Jr., graduated from Lehigh Univ., Bethlehem, Pa., in 1936, majoring in Indus. Mgt. and Bus. Administration. Since Sept. 26, 1939 petitioner has been employed by Beth. Stl. Co., and since some time prior to 1956 assigned to the Car Sales Dept. as Labor Cost Estimating Engr. in the Beth. offices. On August 6, 1956, the drafting room section and part of the estimating section were moved from Beth. to Johnstown, Pa.

Petitioners did not move to Johnstown because by that time, 1956, three of their four children were attending college: a son starting his third year at West Point, a daughter starting her sophomore year at Moravian College, Beth., Pa., and a second daughter entering her Freshman year at Moravian College, Beth. The fourth child, a son was a Junior at High School in Beth: and Mrs. LeTowt was gainfully employed in Bethlehem.

In 1956, 1957 and 1958 petitioners had three children enrolled in private colleges

simultaneously, - in the calendar year of 1958 all four were registered in college! (See T.C. Memo 1963-118, page 2), (Stip. of Facts No.2, Exh. #4, shown in green.)

It is approximately 245 miles from Bethlehem to Johnstown. In the calendar years 1958 and 1959 petitioner Zigmont J. LeTowt, Jr. expended the following amts. for transportation and lodging in Jtn.

	1958	1959
Transportation	1,098.40	1,550.64
Lodging	520.00	780.00
	$1,618.24	$2,330.64

The contention of the commissioner, sustained by the tax court, and affirmed by the United States Court of Appeals relates solely to travel expenses and lodging expenses of petitioner during the period of 1958 and 1959.

The decision under review, while determining under the facts that petitioners' domicile and legal residence was Bethlehem, Pa., nevertheless substantially held that Zigmont J. LeTowt, Jr., the husband, was not "away from home" (T.C. Memo. 1963-118, page 4) in connection with employment, and petitioners' "pattern of living" (T.C. Memo. ditto, page 9) did not require or justify the expenses.

The Tax Court concluded that "home" as the term is used in Secs. 62 (2)(B), 162 (a)(2) I.R.C. 1954, means the taxpayer Zigmont J. LeTowt's place of employment and that Johnstown being such place petitioner was not away from "home" in pursuit of business and consequently the claimed deductions in 1958 and 1959 were not allowable.

Restatement of the Case

Petitioners are husband and wife, devoted parents with Family of Four Children, two boys and two girls, chronologically spaced approximately two years apart. They are college oriented. Both employed, husband always, wife B.C. and A.C. (before children and after children), after the children are safely through adolescence, viz., 1950 to present.

Income is from wages and/or salary.

Petitioners are on a 50-50 equal status basis, and otherwise.

---OUR SELF-INTEREST AND SERVICE TO THE FAMILY AND DEPENDENTS.

***

Petitioner worked for a wage (Bethl. Stl Co. 1950 @ $1.27 /hr. - present $4.61/hr.) and in time became bankrupt, but in the process established a terrific line of credit. By the time our children were ready for college we appeared to be all set. We borrowed from our two best banks in Bethlehem, The Tuition Loan Plan, Inc. N.Y.C., and the Girard Finance Co. (this latter institution for very friendly, no questions asked type of accommodations when we were really strapped. Of course each thought it was the sole friendly benefactor and we were extremely co-operative, careful and circumspect not to change or alter their viewpoint. We were in clover, borrowed clover, of course, but clover none the less!

In the fall of 1976 three (3) of our four children were in college: our two

best banks decided to merge and make one very best bank; and the Beth. Stl. Co. moved my job to Johnstown. It was go or else-.

Well this wasn't as bad, as catastrophic as might appear at first glance. We were healthy which is what counts. The 3 kids stayed in college; the fourth stayed in High School; the merged banks thought we were a pretty decent risk, consolidated our loan transactions and upped the ceiling a bit on our borrowing capacity. Co-petitioner stayed on her job in Bethlehem. I stayed on my job, -in Johnstown, Pa.

college

In 1956, 1957, 1958 we had 3 kids in/ each year: in the calendar year 1958, four (4) were in college. Private colleges, not state schools. But by this time, and by skillful management, obviously in anticipation of projected needs, petitioner had our best bank in Johnstown, the United States National in a liberal lending lethargy and adroitly jockeyed borrow- capacity to $[illegible].00. Being personable, and purpose for which funds were used, may have been in my favor, but I suspect paying it back on time had something to do with it. Our loans will be paid off 10/1/[illegible].

In 1957 and 195[illegible] petitioners claimed modest traveling expense on tax returns and received modest refunds. [illegible]ely, to say the least. We did the same on one return but by that time Mortimer C. Ellis decided to clone-in on the Martinique-tan, schrimp cocktail and steak crowd of business traveling men, and the I R S auditors seized-in my return. (I had been on a fish-fry diet at .25 per dinner for years, since 1956.) The auditors reached back and picked up my 1958 return. So here are the returns in issue, 1958 and 1[illegible].

Petitioners' returns for 1960, 1961, and 1962, the years we had children in college (acutally from 1951 to 1962 we averaged 1½ children in college per year) show the same deduction claims and these returns are in "suspended status" with the I R S at the time of this petition.

Neither the total amount of deductions nor the nature of the deductions in the controversy is in dispute.

ADDENDUM

As this petition is being prepared, (May 6) the Bethlehem Steel Company payroll Supervisor, Johnstown, Pa., advises me that my wages have been attached by Federal Lien filed at Northampton County, Pa. Office of Recorder of Deeds, for alleged deficiencies in my tax returns for 1958 and 1959.

This levy and lien was filed by Robert Watkins, Senior Revenue Officer, Internal Revenue Service, Bethlehem, Pa. office.

-this, in spite of the stay of mandate ordered by the United States Court of Appeals, Third Circuit, in this case.

REASONS FOR GRANTING WRIT

The nature of petitioners case is such as to call for an exercise of this court's power of supervision, and for it to function, by virtue of being the Supreme Court, with sound judicial discretion which gives substance and credence to petitioners' argument in the Tax Court of resorting to "Judicial Review." (p-14 Brief for Petitioners, U.S.C.A., 3rd C; p-3 Argument, Petitioners' Brief to T.C.) "---Oliver Wendell Holmes ---recognized 'without hesitation' that 'judges do and must legislate'." (Judicial Legislation, p-32, 1952 Fred V. Cahill Jr.)

This court has no peers, no superiors, save petitioners, representing the UNIVERSAL, the HUMAN BEING, and his inherent rights in a society or culture.

Petitioners' case has been heard in the lower courts and judge under the provisions of Section 62 (2)(B) and 162 (a)(2) of the Internal Revenue Code of 1954, which provisions are completely anachronistic to the circumstances, the situations and the facts in the case; to the pace and the tempo of today. The opinion of the Court below exposes this condition without the slightest doubt; quoting: "PER CURIAM. THE PETITIONERS' SITUATION IS ONE FOR WHICH THE MEMBERS OF THE COURT HAVE MUCH SYMPATHY, BUT THE REMEDY MUST LIE WITH CONGRESS---." (petitioners' emphasis)

The consciences and the convictions of the members of the court are showing for all, who would deign to look, ---to see.

Legislative law in respect to this case is equally obvious. The concept of com-

muting needs refurbishing in the minds of I R S and the Legislature in relationship to employment, place of residence, travel expense, and what one is in pursuit of, - the exigencies, so to speak. For we do move thru interstellar space at 18,000 mph: thru supersonic space at 1800 mph: and thru gravitational space on our turnpikes and in Texas at 80-90 mph. Petitioner has driven maximum allowable speeds on the Penna Turnpike returning to co-petitioner, in Bethlehem.

Dr. Richard W. Hamming the Director of Mathematics Research of The Bell Telephone Laboratory makes this observation: the industrial revolutions of the past were on the order of 10; computers, our Cybernetic era, bring changes of 6 or 7 magnitudes, equivalent to 10 million times as fast!

It is the professional skill of petitioner to evaluate the productivity of machines and automated mills and men and in concert with Dr. Hamming can state that where we quite recently evaluated machines and men, today we bother only with the machines. People, today industry can do without: even managers are beginning to fear, -their usefulness expendable.

The dilemma created by technological advances combined with the awesome effectiveness of automation will compel living, breathing, feeling people to somehow learn to do nothing in a constructive way. they will have to find enriching uses for their leisure.

and even the optimistic Commissioner of Internal Revenue, Mortimer Caplin is alert to the change. To encourage honesty

the I.R.S. is compiling a list of 75,000,000 taxpayers called the National Identity File to be operated by all-seeing, all-knowing, all-telling computers.

HIS FAILURE LIES IN NOT UP-DATING HIS TAX LAWS.

In 1935 the Supreme Court upheld the "legal right of a taxpayer to decrease the amount of what otherwise be his taxes, or altogether avoid them, by means which the law permits." And the revered Judge Learned Hand went further in the lower court- "Claim every deduction available," he urged, "for nobody owes any public duty to pay more than the law demands; taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant."

How do the members of this court, for instance, interpret the arbitrary, defiant action of the Bethlehem, Pa. District Revenue Officer, Nathan, processing a levy on petitioner's wages April 28, 1971. This action was taken in the face of and in wilful disregard to the order of the United States Court of Appeals staying the mandate of this court to May 28, 1971.

This brazen invasion of the jurisdiction and authority of the court, [illegible] the invasion of the protected rights of [illegible] indicates the alarming one-sided adversary role that tax-people are assuming.

THE I.R.S. IS CONFISCATING [illegible]
[illegible]
[illegible]
[illegible]

This court's job is to affirm and defend the individual's absolute and inviolable right to life, liberty and property, which includes his right to seek, acquire and attain physical and mental development to as great a degree, for himself and his family, as endowments, will and resources permit, yet not be bled white, and be impoverished by taxes, in the process.

Taxpayer should not willingly, submissively or deliberately be kept in thralldom.

It might be well for this court to border also the degree to which, as perhaps in this case, the courts below are, in part, merely maintaining disciplines. The judgments of the courts and the practice of the Internal Revenue Service might well be judging and affirming only the structural aspects of the concept of control - while being burdened with a cumbersome statute, and are NOT in truth judging net income tax liabilities or obligations. THERE IS PERHAPS, HERE, A DECIDED ELEMENT OF CANT.

The simple and sensible law of human is apparent and should prevail here: the individual, and his right to attain and develop what he can of the human potential, is paramount.

Conclusion

For the above and foregoing reasons it is prayed that a writ of certiorari issue for this Court to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

Respectfully submitted,

Vincent J. LeTowt, Jr.
Bethlehem, Pennsylvania
Petitioner, pro se

APPENDIX I

Opinion of the United States Court of Appeals for the Third Circuit, Zigmont J. LeTowt, Jr., et al v. Commissioner of Internal Revenue, Case #14,534

Before Biggs, Chief Judge, and Forman and Ganey, Circuit Judges.

Per Curiam.

The petitioners' situation is one for which the members of the court have much sympathy, but the remedy must lie with Congress for we may not by judicial legislation revise the existing tax law. The decision of the Tax Court will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals, for the Third Circuit.

APPENDIX II

Judgment Order of the United States Court of Appeals for the Third Circuit, entered March 12, 1964, in the case of Zigmont J. LeTowt, Jr., et al v. Commissioner of Internal Revenue, Case #14,534

This cause came on to be heard on the record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered, and this decree by this Court that the decision of the said Tax Court in this cause be, and same is hereby affirmed.

STAY OF MANDATE

Pursuant to Rule 36 of the Ninth Circuit, it is ORDERED that issuance of the mandate in the above-entitled case be, and it is hereby stayed until [illegible], 1961.

[illegible]
Chief Judge

[illegible], 1961.

Present: Hipps, Chief Judge, [illegible] and Duniway, Circuit Judges.

Upon consideration of the application by petitioners

It is ORDERED that issuance of the mandate herein be, and it is hereby stayed to [illegible], 1961.

By the Court,

[illegible]

[illegible], 1961.

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1139

ZIGMONT J. LETOWT, JR., and VIRGINIA C. LETOWT, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In 1956 petitioner was transferred by his employer from Bethlehem, Pennsylvania, to Johnstown, Pennsylvania, approximately 245 miles away. For personal reasons, including the fact that some of their children attended college in the Bethlehem area, petitioner and his wife continued to live in Bethlehem. On his federal income tax returns for 1958

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[1] Virginia C. LeTowt is a party solely because she filed joint returns with her husband.

and 1959, petitioner claimed as deductions amounts spent in traveling to Johnstown and for lodging in Johnstown during the week. The Tax Court, affirmed by the court of appeals, disallowed the deductions.

Section 162(a)(2) of the Internal Revenue Code of 1954 allows a deduction for "all the ordinary and necessary expenses * * * [incurred] in carrying on any trade or business, including * * * traveling expenses * * * while away from home in the pursuit of a trade or business." To be deductible, traveling expenses must be incurred because of the needs of the business; those incurred, as in this case, solely because of the taxpayer's personal desires to live in a city other than that in which he is employed are nondeductible "personal" expenses. *Commissioner* v. *Flowers*, 326 U.S. 465. The decision is correct and there is no conflict of decisions.[2] The petition should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

GILBERT E. ANDREWS,
ROBERT H. SOLOMON,
Attorneys.

JUNE 1964.

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[2] Assessment and collection of a deficiency determined by the Tax Court are stayed only if the taxpayer files a bond pending review (§ 7485). Since petitioner did not file the required bond, the action taken to collect the tax, of which petitioner also complains, was fully authorized.

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